

MAR 24 2006

BEFORE THE FEDERAL ELECTION COMMISSION

2006 MAR 27 A 9:00

In the Matter of)
) MURs 5164 and 5182
)
Reform Party 2000 Convention Committee)
)
and Gerald Moan, in his official capacity)
)
as Treasurer; and)
)
Reform Party of the United States of America)
)
and Beverly Kennedy and Barbara Dale Washer)
)
in their official capacity as Treasurer)

SENSITIVE

GENERAL COUNSEL'S REPORT # 2

I. ACTIONS RECOMMENDED

Take no further action as to the Reform Party 2000 Convention Committee and Gerald Moan, in his official capacity as Treasurer, and the Reform Party of the United States of America and Beverly Kennedy and Barbara Dale Washer¹, in their official capacity as Treasurer, and close the file with respect to these Respondents.

II. INTRODUCTION

On October 7, 2003, the Commission found reason to believe that the Reform Party 2000 Convention Committee and Gerald Moan, in his official capacity as Treasurer ("Convention Committee"), and the Reform Party of the United States of America and Mark Lauterman, in his official capacity as Treasurer ("RPUSA"), violated 26 U.S.C. § 9008(c), 26 U.S.C. § 9012(c)(2), 11 C.F.R. § 9008.7(a) and 11 C.F.R. § 9012.3(b) by making an improper payment of public funds to The Performance Group ("TPG"), a consultant, for activities that the Audit Division

¹ Mark Lauterman was named as the treasurer of the Reform Party of the United States of America for the purpose of the reason to believe findings. This Office has learned that Lauterman was later replaced as treasurer and that the Reform Party of the United States of America has named several different treasurers since the time of the reason to believe finding. In fact, the Reform Party has splintered into at least two factions, each of which purports to represent the Reform Party. Given the uncertainty regarding which faction actually represents the Reform Party and since the factions have both filed Statements of Organization naming a treasurer, both Beverly Kennedy and Barbara Dale Washer are listed as a named respondent treasurer in this matter.

1 determined were ineligible convention expenses under the Presidential Election Campaign Fund
2 Act ("Fund Act").

3 The First General Counsel's Report for MURs 5164 and 5182 recommended that these
4 matters be held in abeyance pending resolution of the Commission's repayment determination
5 requiring the RPUSA to repay the U.S. Treasury \$333,558 in public funds. *See* MURs 5164,
6 5169, 5182, 5190, First General Counsel's Report ("FGCR"), dated October 2, 2003.² The
7 Commission entered the repayment determination after concluding that the Convention
8 Committee improperly used public funds for the Reform Party's 2000 Convention and failed to
properly document the use of public funds. After concluding the administrative review, the
Commission authorized filing suit against the RPUSA to collect on the repayment determination.

On November 22, 2005, the U.S. District Court for the Northern District of Florida
ordered the RPUSA to repay the U.S. Treasury \$333,558 plus interest calculated in accordance
with 11 C.F.R. § 9007.2(d)(3). *See FEC v. Reform Party of the United States of America*, 2005
WL 3134063, at *4 (N.D.Fla. Nov. 22, 2005). The court also enjoined the RPUSA from
diverting its assets to any expenditures other than repayment of federal taxes until it completes its
repayment obligation. *See id.*

Accordingly, now that the court order has been issued, this Office recommends that the
Commission take no further action in MURs 5164 and 5182 as to the Reform Party 2000
Convention Committee and Gerald Moan, in his official capacity as Treasurer, and the Reform

² The First General Counsel's Report for MURs 5164 and 5182 also addressed two other matters, MURs 5169 and 5190, involving allegations relating to the Reform Party's expenditures of public funds. MUR 5169 alleged that the Committee violated the Presidential Election Campaign Fund Act by spending public money on the Reform Party's 2000 Convention, which allegedly was not conducted in accordance with RPUSA's rules. MUR 5190, in addition to incorporating the allegation in MUR 5169 regarding expenditures of public funds for the party's convention, also challenged payments made by the Committee for professional services of an attorney. The Commission voted to dismiss MURs 5169 and 5190 as to all respondents and close the files. *See* FGCR at 18-23.

Party of the United States of America and Beverly Kennedy and Barbara Dale Washer, in their official capacity as Treasurer, and close the file as to these Respondents.

III. ANALYSIS

The Convention Committee was established as the "convention-committee" of the RPUSA pursuant to the Fund Act which provides public financing for presidential election campaigns and nominating conventions. Pursuant to the Fund Act, the Convention Committee received \$2,522,690 in federal funding to pay for allowable convention expenses. On August 10, 2000, the RPUSA convened a nominating convention at the Long Beach Convention Center ("Long Beach Convention") where Patrick Buchanan was selected as the party's presidential nominee and Ezola Foster as its vice-presidential nominee.³

A. Repayment Proceedings

After a statutorily mandated audit of the Convention Committee, the Commission approved a Final Audit Report on September 26, 2002. See Report of the Audit Division on the Reform Party 2000 Convention Committee (Sept. 26, 2002). The Final Audit Report concluded that approximately \$338,000 in expenditures by the Convention Committee, including a \$300,000 payment to The Performance Group for consulting services, were not legitimate convention expenses under the Fund Act and, therefore, could not be paid with public funds. The Final Audit Report's conclusion that the \$300,000 payment to TPG was an impermissible expense was largely based on the Convention Committee's failure to provide the necessary

³ A competing faction of the RPUSA, claiming they were denied entrance to the Long Beach Convention, convened a competing convention across the street which nominated John Hagelin as the RPUSA presidential nominee and Nat Goldhaber as its vice-presidential nominee. A California Superior Court in Los Angeles ultimately upheld the legality of the Long Beach Convention and the Buchanan/Foster nomination.

1 documentation establishing that the payment to TPG was a permissible expense.⁴ Consequently,
2 the Commission issued a repayment determination requiring the RPUSA to repay the U.S.
3 Treasury the \$338,558 in public funds.

4 Pursuant to a request from the RPUSA for administrative review, the Commission
5 concluded that the RPUSA was required to repay the \$333,558 identified in the Audit Report.
6 See 11 C.F.R. §§ 9008.12(c) and 9007.2(c)(2). The Commission then rejected as untimely the
7 RPUSA's request for reconsideration of the repayment determination. 11 C.F.R. § 9007.5.
8 Finally, a petition for review of the repayment determination was dismissed by the D.C. Circuit
for being untimely. See *O'Hara v. FEC*, 2004 WL 1465681 (D.C. Cir. 2004).

10 Following the RPUSA's exhaustion of administrative remedies in the repayment context,
11 and its failure to make the repayment, the Commission authorized filing suit to collect the money
12 owed by the RPUSA. On November 22, 2005, the U.S. District Court for the Northern District
13 of Florida ordered the RPUSA to repay the U.S. Treasury \$333,558 plus interest calculated in
14 accordance with 11 C.F.R. § 9007.2(d)(3). See *Reform Party*, 2005 WL 3134063, at *4.

⁴ The documentation provided indicated that at least some of the services performed by TPG related to a convention held in Las Vegas on March 2000, which was not the party's official nominating convention.

1 B. Enforcement Matters

2 The complaints in MURs 5164 and 5182 raise the same four allegations challenging
3 specific expenditures by the Convention Committee on the grounds that they were not legitimate
4 convention expenses under the Fund Act and challenging all of the Convention Committee's
5 expenditures for the Long Beach Convention on the grounds that the convention was not
6 conducted in accordance with the party's rules. The Commission dismissed three of the
7 allegations: (1) that the Reform Party's 2000 nominating convention was not conducted in
8 accordance with the party's rules; (2) that the payment of a performance bond violated the Fund
9 Act; and (3) that a payment to Perelman Pioneer for stage design violated the Fund Act. *See*
10 FGCR at 14, 17-18.

11 The final allegation, and the basis for the Commission's reason to believe finding, related
12 to the same \$300,000 payment to TPG for stage design and public relations services. The
13 complainants alleged that the \$300,000 payment to TPG was impermissible because TPG was
14 not a recognized stage design or public relations firm and, instead, was established just weeks
15 before the expenditures and was comprised of professional lobbyists and not convention
16 consultants. *See* FGCR at 11.

17 For the reasons set forth in the Audit Report, the Commission found there was reason to
18 believe that the Convention Committee violated 26 U.S.C. § 9008(c), 26 U.S.C. § 9012(c)(2),
19 11 C.F.R. § 9008.7(a) and 11 C.F.R. § 9012.3(b) by making the payment to TPG and that
20 RPUSA violated 26 U.S.C. § 9008 (c), 26 U.S.C. § 9012 (c)(2), 11 C.F.R. § 9008.7(a) and
21 11 C.F.R. § 9012.3 (b) because it was responsible for violations of the Fund Act committed by its
22 convention committee. *See* FGCR at 14-16.

1 Instead of conducting an investigation or entering into conciliation, the Commission
2 determined that it would hold MURs 5164 and 5182 in abeyance pending resolution of the
3 repayment determination against the Committee. At that time, this Office suggested that should
4 ~~the Commission successfully secure full repayment of the funds through the repayment process,~~
5 we would likely recommend that the Commission close these matters with no further action. We
6 now recommend that the file be closed as to these Respondents because a final judgment has
7 been entered against Respondents in the repayment context.

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15 Given the outstanding court order in the repayment litigation, which incorporates the
16 same expenditure that is challenged in these two MURs, and the limited benefit to the
17 Commission from pursuing these matters further in the enforcement context, this Office
18 recommends that the Commission take no further action and close the file as to the Reform Party
19 2000 Convention Committee and Gerald Moan, in his official capacity as Treasurer, and the
20

⁶ The statute of limitation on these matters ran on December 10, 2004, after the RPUSA had unsuccessfully challenged the repayment determination before the Commission and in the middle of the RPUSA's ultimately unsuccessful action in the D.C. Circuit.

Reform Party of the United States of America and Beverly Kennedy and Barbara Dale Washer, in their official capacity as Treasurer, and close the file.

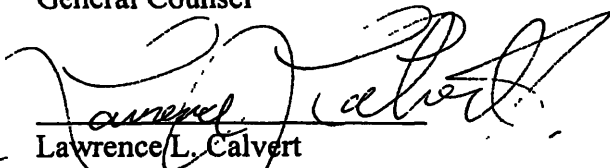
IV. RECOMMENDATIONS


1. Take no further action against the Reform Party 2000 Convention Committee and Gerald Moan, in his official capacity as Treasurer, and the Reform Party of the United States of America and Beverly Kennedy and Barbara Dale Washer, in their official capacity as Treasurer.
2. Close the file.
3. Approve the appropriate letters.

Lawrence H. Norton
General Counsel


3/24/06
Date

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